



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 13, 1996

Ms. Sandra C. Joseph  
Open Records Counsel/Disclosure Officer  
Office of the Comptroller of Public Accounts  
LBJ State Office Building  
111 East 17th Street  
Austin, Texas 78774

OR96-0181

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37846.

The Comptroller of Public Accounts (the "comptroller") received a request for:

1. Copies Audit Procedures Manuals for Sales Tax, Franchise Tax, and Severance Tax.
2. Copies Policy and Procedures Manuals for Sales Tax, Franchise Tax, and Severance Tax.
3. Copies of all Training Materials and Handouts given to auditors during the past year.
4. Copy of a current Micro Fiche Index regarding Hearings, AG Opinions, and Cases.
5. Copies of all current Rulings for Sales, Franchise, Severance Taxes.

You state that you have provided the requestor the information requested in items 1 and 2 and are in the process of providing him most of the other requested information. However, you claim that some of the information requested in item 3 is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

You state that the Comptroller received this request for information on November 27, 1995. The Comptroller did not request an opinion from this office until December 21, 1995, more than ten days after the Comptroller's receipt of the request. You claim that the Comptroller needed additional information from the requestor to clarify what type of training materials the requestor was seeking. You state that you contacted the requestor on December 4, 1995, and he responded on December 11, 1995, stating what type of handouts he was seeking. He gave you additional clarifying information in a phone call on December 13, 1995, which you confirmed in a letter of the same date. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

*See also* Gov't Code § 522.222(b); Open Records Decision No. 561 (1990) at 8. As the Comptroller made efforts to contact the requestor to clarify the request for information within the ten days provided for by law and submitted its request for a ruling to this office within ten days of receiving the requested clarification, we conclude that the request for a ruling was timely.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The Seventy-fourth Legislature twice amended section 111.006 of the Tax Code. *See* Act of May 12, 1995, 74th Leg., R.S., ch. 175, 1995 Tex. Sess. Law Serv. 1888 (Vernon); Act of May 19, 1995, 74th Leg., R.S., ch. 351, § 4, 1995 Tex. Sess. Law Serv. 2881, 2882 (Vernon). Section 111.006(a)(2) of the Tax Code provides:

(a) Except as provided by Subsection (d), the following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted under Subsection (b)<sup>1</sup> of this section:

---

<sup>1</sup>Subsections (b) and (d) are not relevant to the disposition of this open records request.

(2) all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income profits, losses, or expenditures of the taxpayer.

*See id.* (footnote added). This provision makes confidential information obtained or derived from taxpayers. *See A & T Consultants v. Sharp*, 904 S.W.2d 668 (Tex. 1995). Sections 151.027(b) and 171.206(2) of the Tax Code make confidential the same type of information related to sales and use taxes and franchise taxes, respectively. Sections 151.027(a) and 171.206(1) make confidential information obtained from a record that is required to be filed under the respective chapters. You ask whether redacting the taxpayer's name and number on the submitted documents is sufficient to render the documents public. These statutes indicate that they encompass "all information" and not simply information tending to identify a taxpayer. Therefore, we do not believe that redacting the name and number of the taxpayer will make the documents public.

You state that the first and second groups of documents submitted to this office were obtained from taxpayers during the course of audits conducted pursuant to chapters 111 and 151 of the Tax Code, respectively. None of the exceptions to confidentiality set out in the appropriate Tax Code provisions applies. Accordingly, the Comptroller must withhold from required public disclosure the first group of documents under section 111.006(a)(2) of the Tax Code and the second group of documents under section 151.027(b) of the Tax Code as applied through section 552.101 of the Government Code.

The next group of documents is a collection of print-outs of computer inquiry screens. You state that certain pieces of information contained on these screens were obtained in the course of an examination or from a report or return. None of the exceptions set out in the appropriate Tax Code sections applies. We agree that, as the highlighted information was obtained in this manner, it is made confidential by sections 151.027 and 171.206 of the Tax Code as applied through section 552.101 of the Government Code. Additionally, the court in *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 680 (1995) held that assignment codes are excepted from disclosure. Therefore, the Comptroller must withhold this information from disclosure under section 552.101.

You claim that section 552.111 excepts a certain draft document from disclosure. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Section 552.111 excepts from required public disclosure a preliminary draft of a letter or

document related to policymaking matters, since drafts represent the advice, opinion, and recommendation of the drafter as to the form and content of the final document. Open Records Decision No. 559 (1990). We have reviewed the draft document at issue and conclude that it relates to the Comptroller's policymaking processes. Therefore, the Comptroller may withhold this draft document from disclosure.


You next claim that section 552.108 excepts from disclosure parts of one requested document. Section 552.108(a) generally applies to records of a law-enforcement agency or prosecutor that deal with the detection, investigation or prosecution of crime. However, in certain circumstances, an agency that is not a law-enforcement agency may claim section 552.108. This office has determined that if an investigation by an administrative agency reveals possible criminal conduct that the agency intends to report or already has reported to the appropriate law-enforcement agency, section 552.108 will apply to the information gathered by the administrative agency if its release would unduly interfere with law enforcement. See Open Records Decision No. 493 (1988).

The Comptroller may withhold from disclosure audit papers pursuant to section 552.108 to protect the Comptroller's interest in enforcing the tax laws. *A & T Consultants v. Sharp*, 904 S.W.2d 668 (Tex. 1995). Accordingly, we conclude that section 552.108 of the Government Code excepts the requested information from required public disclosure. See Open Records Letter No. 95-1157 (1995).

Federal tax return information, including schedules, are confidential under federal law. 26 U.S.C. § 6103(a). Therefore, the comptroller must withhold federal tax return information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 37846

Enclosures: Submitted documents

cc: Mr. Troy Harrison  
A&T Consultants Inc.  
3321 Bell  
Amarillo, Texas 79106  
(w/o enclosures)